IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

MFA.No. 1033 of 1996(A)

OP MV.385/1992 of M.A.C.T., THALASSERY
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APPELLANT(S):

R.XAVIER, S/O.RAJAPPAN, AGED 47 YRS.,
PATTIYAM, KOTTIYODI P.O., KOTTAYAMPOYIL.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.T.A.SHAJI

RESPONDENT(S):
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1. KATHADI RAGHAVAN, S/O.CHATHU,
PUTHIYA PURAYIL VEEDU, ERANHOLI,
THALASSERY (DRIVER, KRC.6050 HIRAN BUS)

2. M.V.VASANTHA, W/O.P.K.MADHAVAN,
ERANHOLI, P.O.THALASSERY (OWNER KRC.6050 HIRAN BUS)

3. UNITED INDIA INSURANCE COMPANY LIMITED,
THALASSERY.

4. P.DEVADAS, S/O.GOVINDAN, GOKUL STREET,
NARAVOOR, P.O.KUTHUPARAMBA
(DRIVER KRE.9108 SREEJITH BUS)

5. K.PUSHPANATHAN, S/O.KUNHIRAMAN,
PATTIAM, P.O.KOTTAYAMPOYIL,
(OWNER KRE 9108 SREEJITH BUS)

6. NEW INDIA ASSUANCE COMPANY,
M.G.ROAD, THALASSERY.

7. P.K.KADERKUTTY, S/O.ABOO HAJI, FATHIMA MANZIL,
M.P.ROAD, IRITTY.

ADV. SRI.M.RAJAGOPALAN
SRI.M.RAMASWAMY FOR
SRI.R.S.KALKURA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO. 1033 OF 1996

Dated this the 16th day of November, 2006

JUDGMENT

This appeal is filed challenging the award passed by the Motor Accidents Claims Tribunal, Thalassery ('the Tribunal', for short). The appellant is the claimant. He claimed an amount of Rs.50,000/- as compensation for the injury sustained in a motor accident and the Tribunal passed an award that he can realise Rs.1,000/- with interest at 12% per annum from the date of petition (30.3.1992) till realisation.

2. According to the appellant-claimant, on 1.10.1991 at about 9.45 a.m was travelling from Mattanur to Kuthuparamba in a bus and when it reached Vannathimoola, the bus coming from the opposite direction hit against the bus in which the appellant was travelling. Due to the impact, the appellant was thrown forward and the head was hit. The front side of the chest and also the right leg was hit. The accident was due to the rash and negligent driving of both the drivers. The appellant was taken to the Government Hospital, Kuthuparamba and was

admitted as an inpatient for seven days. Thereafter he was referred to the Government Hospital, Thalassery and was treated there for 16 days upto 23.10.1991.

3. After the accident, he suffered some problem in the sight and he could also not keep the head straight. He was also suffering from chest pain. He was not able to do his normal work. He was working as a construction worker and his earning was Rs.75/- per day. He is unable to attend the work now. Therefore, he has claimed Rs.50,000/- as total compensation for loss of earning power, medical expenses etc. Respondents 1 and 4 are the drivers and respondents 2 and 5 are the owners of the vehicles. Respondents 3 and 6 are the insurers of the vehicles. They are jointly and severally liable to pay the compensation.

4. On the side of the claimant PW1 was examined and Exhibits A1 to A5 were marked. Exhibit X1 was also marked. On the side of the respondent, no evidence was adduced. The Tribunal held, on the evidence adduced on behalf of the appellant that PW1, the claimant was unreliable. It was found that the accident was occurred on 1.10.1991 and he was discharged from

the hospital on the same day. It was also held that he "managed to get himself admitted in the hospital somehow or other subsequently". It was also found that the medicines prescribed were all by an Eye Specialist and those are not for the alleged injury sustained by PW1 in the accident, since the medical bills are not for the relevant period.

5. On going through the evidence in detail, I cannot agree with any of the findings of the Tribunal as stated above. Exhibit A2 is the accident-cum-wound certificate issued from the Government Hospital, Kuthuparamba. The said document itself shows that the appellant was admitted as an inpatient in the hospital. The evidence of PW1 shows that he was admitted in the hospital for seven days and thereafter he was referred to the Government Hospital, Thalassery. There is no challenge on this aspect.

6. Further, the case sheet Exhibit X1 which is produced from the Government Hospital, Thalassery, shows that he was referred from the Government Hospital, Kuthuparamba to the Government Hospital, Thalassery as per a reference letter dated

6.10.1991. The records show that he was admitted in the Government Hospital, Kuthuparamba on 7.10.1991 and he was discharged only on 23.10.1991. Therefore, in the light of the above evidence, it can be easily inferred that the appellant was admitted in the hospital on 1.10.1991 upto 6.10.1991 and the finding that he was discharged on 1.10.1991 cannot be sustained.

7. It is also relevant to note that it is only because that there was no external injury as per Exhibit A2 wound certificate issued from the Government Hospital, Kuthuparamba that the Tribunal found that the evidence of PW1 is unreliable. The Tribunal also entered a finding that the injury sustained by PW1 in the accident has no connection with the medicines prescribed by the Eye Specialist. It appears from the judgment that the Tribunal was under the impression that there is no evidence to prove that the injury sustained in the accident led to any Ophthalmic problem. The above findings cannot be sustained.

8. PW1 specifically stated in the evidence that he had suffered some problem to the eyes subsequent to the accident

and he was treated in the hospital. Page No.4 of Exhibit X1 which is the reference letter to the duty doctor, Government Hospital, Thalassery that the patient involved in the accident has ophthalmic problem and he requested the Government Hospital to do the needful. It is also suggested that he requires a surgical consultation in the matter. It is quite clear from the above that the problem suffered by PW1 is not an insignificant one.

9. It cannot be said that PW1 was hospitalised as an inpatient "some how or other" and that he was managing himself to get himself admitted in the hospital etc. as found by the Tribunal. Several medicines were prescribed during the period in which he was treated in the Government Hospital, Kottayam. He had some ophthalmic problem consequent to the injury sustained in the accident.

10. It may not be proper to infer that only the external injury will result in any problem. Even without an external injury, a person can suffer some problem and that may be the reason why PW1 was treated in the Government Hospital from 7.10.1991 to 23.10.1991 for a considerable long period even

though he had no external injury. It is clear from Exhibit X1 itself that the patient developed some ophthalmic problem and the doctor has even recommended that some surgical consultation was necessary. As per the evidence adduced in this case, the accident led to ophthalmic problem and a long period of treatment as an inpatient that too in two Government hospitals. In the light of the overwhelming evidence it cannot be said that the injury which he allegedly suffered in the accident was a minor one.

11. However, on going through the evidence, especially the medical bills, I find that it cannot be ruled out that the ophthalmic problem which the appellant has suffered must have some connection with the accident which has occurred in this case. The accident has resulted in injury to the skull for which he had taken treatment as an inpatient in two Government Hospitals. But PW1 did not specifically state that the treatment which he had taken in 1992 and thereafter was consequent to injury caused in the accident. On consideration of the facts and circumstances of the case, I find that the appellant has to be

given an opportunity to establish whether the medical bills produced in this case have any connection with the injury caused in the accident etc.

12. In the result, the case is remanded to the Tribunal for fresh consideration and disposal in the light of the observations made in this judgment. The appellant shall be given an opportunity to adduce evidence. The parties shall appear before the Tribunal on notice to their counsel.

K.HEMA, JUDGE

vgs.